

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

SOUTHERN APPALACHIAN  
MOUNTAIN STEWARDS, et al.,

Plaintiffs,

v.

Civil Action No. 2:09cv200

COLONEL DIONYSIOS ANNINOS  
District Engineer, U.S. Army Corps  
of Engineers, Norfolk District, et al.,

Defendants.

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UNOPPOSED MOTION TO STAY AND MEMORANDUM IN SUPPORT

Pursuant to Fed. R. Civ. P. 7, Federal Defendants and Plaintiffs move for an order to extend the stay of this case for an additional 45 days in order to allow an opportunity for the parties to consider whether resolution of this matter can be achieved without judicial involvement. The reasons for the motion are as follows:

1. The Complaint in this case raises a facial challenge to Nationwide Permit No. 21 (NWP 21), a general permit reissued on March 9, 2007 pursuant to § 404(e) of the Clean Water Act (CWA), 33 U.S.C. § 1344(e). 72 Fed. Reg. 11092 (Mar. 12, 2007).
2. The Complaint in this case also raises an as-applied challenge to the NWP 21 verification issued by the U.S. Army Corps of Engineers (“the Corps”) on August 7, 2007 to the A&G Coal Corporation for the Ison Rock Ridge Surface Mine in Wise County, Virginia (the Ison Rock Project).

3. As set forth in the status report filed on June 30, 2010, the NWP 21 verification authorizing the Ison Rock project has been suspended by the Corps' District Engineer for the Norfolk District. That NWP 21 verification remains suspended as of this date. The Corps has not yet completed suspension procedures with respect to A & G Ison Rock NWP 21 verification and, in turn, has not issued the written final decision required by 33 C.F.R. 330.5(d)(2)(iii).

4. As set forth in the joint status report filed on June 30, 2010, the Corps Headquarters made a decision to suspend the NWP 21. Suspension of Nationwide Permit 21 (Notices), 74 Fed. Reg. 34712 (June 18, 2010). The suspension applies prospectively to prohibit District Engineers from "continu[ing] to process NWP 21 PCNs [preconstruction notifications] that are pending as of June 18, 2010, or accept[ing] new or revised NWP 21 PCNs . . ." 74 Fed. Reg. at 34714.

5. Activities that were verified by the District Engineers prior to June 18, 2010 will continue to be authorized by that NWP until it expires on March 18, 2012, unless modified, suspended or revoked by the District Engineer. District Engineers may not modify previously issued NWP 21 verifications in this region to authorize additional discharges of dredged or fill material into waters of the U.S.

6. In light of the suspension of both the NWP 21 and the Ison Rock NWP 21 verification, the Plaintiffs and Federal Defendants have discussed resolution of matters at issue in this case. Plaintiffs have asked the Corps for certain information relating to other Virginia projects verified under NWP 21. Solely for the purpose of facilitating resolution of this case, the Corps is working on gathering such information. However, obtaining such information requires burdensome and time-consuming coordination and efforts by the Norfolk District and permittees of NWP 21's issued by Norfolk District to ascertain project details and status of multiple projects and proposed projects. It is expected that obtaining such information could take at least three to four

weeks.

7. Discussions amongst the Plaintiffs and Federal Defendants are on-going, but a full resolution of this case will not likely be reached until further information has been obtained, and the parties can evaluate the scope and impact of the recent Corps decision and remaining NWP 21 projects in Norfolk District.

THEREFORE, the parties in this case respectfully request a 45-day stay to allow parties to obtain and consider information and continue efforts to discuss and reach resolution of all issues.

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#### CERTIFICATE OF SERVICE

I hereby certify that, on the 1<sup>st</sup> day of July, 2010, I will electronically file the foregoing Unopposed Motion to Stay with the Clerk of Court using the CM/ECF system, which will then send a notification of electronic filing (NEF) to the following filing user(s):

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